

MAR 17 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY B. GARNIER, JR.,

Plaintiff - Appellant,

v.

MAGGIE MILLER-STOUT; et al.,

Defendants - Appellees.

No. 05-35295

D.C. No. CV-04-05234-RBL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted March 8, 2006**

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Washington state prisoner Henry B. Garnier, Jr., appeals pro se from the district court's summary judgment in favor of prison officials in his 42 U.S.C.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1983 action alleging he was suffered cruel and unusual punishment when foul air came through his cell's ventilation system. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Delta Sav. Bank v. United States*, 265 F.3d 1017, 1021 (9th Cir. 2001), and we affirm.

The district court properly granted summary judgment to defendants because he failed to raise a genuine issue of material fact as to whether defendants knew of and disregarded an excessive risk to his health. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The evidence presented showed that once defendants became aware of the fumes, they mounted a full investigation, and offered Garnier a cell transfer due to his sensitivity.

The district court's summary judgment in favor of defendants Miller-Stout, Agar, and Mason was proper because Garnier failed to allege that they knew of, or personally participated in, the alleged constitutional deprivation. *See Mabe v. San Bernardino County*, 237 F.3d 1101, 1109 (9th Cir. 2001).

AFFIRMED.